

# **Probate Court**

## **Implementation Questions and Answers Subsequent to SCAO Administrative Memorandum 2003-08.**

1. Are the Conservatorship fees changing? The Guardianship fees are listed as increasing from \$50 to \$150, but nothing specific is mentioned regarding Conservatorship fees.

Yes. Conservatorship fees are included in MCL 600.880(1) and will increase to \$150. Guardianship fees are listed separately because they originally had a filing fee that was different than any other fee. Now all new proceedings in probate court will require a \$150 filing fee.

2. What is the difference between a Conservatorship and Guardianship in probate court and an ancillary Conservatorship or Guardianship proceeding in Circuit Court, and are the fees the same?

The fee is \$150 for any Guardianship or Conservatorship proceeding, whether filed in probate or circuit court. An ancillary proceeding is filed in the family division of circuit court when a matter is already pending concerning the protected individual.

3. Under what circumstances can state minimum cost be waived?

The only provision for remitting the state minimum cost is when the court has ordered payment of the state minimum cost as a term of probation, which the court is required to do under MCL 771.3(1)(g), but the defendant, who is not in willful default, is unable to pay and petitions the court for remission of the unpaid portion of all costs, including possible state minimum costs.

4. Are motion fees collected in the following circumstances?

***Motion to Amend Complaint*** – YES. Although an actual order may not be signed, it is a motion that is filed with the court which asks that the court or judge rule in favor of an action that is being requested by the applicant. *MCR 2.119(G)(1)*

***Application for Certification*** – NO. Although there is a request for the court to perform an action, it is merely the court certifying that the record is true and accurate. It does not result in an action directed in favor of the applicant. It is merely for the purpose of certifying a true and accurate record to the appellate court for purposes of appeal.

**Garnishment Release – NO.** There is no motion being filed. A plaintiff is merely releasing a defendant from further liability. This is along the same lines as a voluntary dismissal. *MCR 2.119(G)(1)*

**Motion and Order to Show Cause – YES.** This is a motion that is filed with the court asking that an act be performed and requesting a hearing to require compliance with a previously filed order. The applicant is asking that an act be performed and directed in his/her favor. *MCR 2.119(G)(1)*

**Petition and Bench Warrant – NO.** These are either criminal or quasi-criminal in nature. This applies to petitions and bench warrants in both criminal and civil cases. *MCR 2.119(G)(3)(a)*

**Motion for Dismissal – YES.** This is a motion filed with the court asking that an act be performed and directed in favor of the applicant. *MCR 2.119(G)(1)*

**Voluntary Dismissal – NO.** The plaintiff is voluntarily dismissing the case of his or her own accord. No act need be performed by the court or judge in favor of the applicant.

**Stipulation and Order – NO.** A motion fee may not be charged for entry of an uncontested order. *MCR 2.119(D); MCR 2.119(G)(3)(e)*

**Consent Judgment – NO.** If a motion is filed for entry of a consent judgment, a fee may not be collected. *MCR 2.119(G)(3)(e)* provides that a fee may not be collected for entry of an uncontested order.

**Default Judgment – NO.** As long as a default judgment is being entered as a clerical or administrative function, there is no motion fee. **If a Motion for Entry of Default Judgment is filed where there is no sum certain and a hearing must be held, then a motion fee would be collected.** *MCR 2.119(G)(1)*

**Consent Judgment with Installments – MAYBE.** If a motion is made orally, on the record, then NO. If a motion is filed with the court, then YES. *MCR 2.119(G)(1)*

**Demand for Removal – NO.** This is a right that a party is entitled to seek rather than a request for relief.

**Motion for Alternate Service – YES.** This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

**Motion to Set Aside – YES.** This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

***Objections to Entry of Order under MCR 2.602(B) – NO. MCR 2.119(G)(3)(b)***  
***Objections to Garnishment – NO.***

***Objections to Installment Payments – NO.***

The motion fee has already been paid and this is merely an objection to entry of the proposed order.

***Petition to Set Aside Installment Payments – YES.*** This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

***Motion for Second Summons – YES.*** This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

5. Are motion fees taxable as costs?

Motion fees may be taxable as costs to a party.

#### **DEFINITIONS FOR PURPOSE OF MOTION PRACTICE UNDER MCR 2.119**

***Pending Action*** – Any case that has one or more unresolved issues, including if they are post-judgment, that requires any action by the court or judge and is in the process of settlement or adjustment of those issues. The only actions that are not considered pending are closed cases with no post-judgment activity, and those that contain an order granting a stay on the entire case (i.e. bankruptcy).

***Motion*** – Any application by any name (i.e. motion, petition, application, request, etc.) that is made to the court or judge for the purpose of obtaining a rule, order or act to be directed in favor of the applicant.